IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 660 of 1986

with

FIRST APPEAL No 822 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

and

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

F.A. No. 660 of 1986:

STATE OF GUJARAT : Appellant.

Versus

MINOR KISHANBHAI PUNABHAI & FIVE OTHERS: Respondents.

F.A. No. 822 of 1986:

MINOR KISHANBHAI POONABHAI & OTHERS : Appellants.

Versus

PRADHUMAN BHOLENADH RAVAL & ANR. : Respondents.

Appearance:

1. First Appeal No. 660 of 1986

Mr. B.D. Desai, AGP for the appellant.

NOTICE SERVED for Respondent No. 1

MR RAJNI H MEHTA for Respondent No. 6

2. First AppealNo 822 of 1986

M/S.SURTI & VAKHARIA for the appellant.

SERVED BY RPAD - (N) for Respondent No. 1

Mr. B.D. Desai, AGP for Respondent No. 2

NOTICE SERVED for Respondent No. 3

MR RAJNI H MEHTA for Respondent No. 6

CORAM : MR.JUSTICE H.R.SHELAT

and

MR.JUSTICE H.H.MEHTA

Date of decision: 30/03/2000

ORAL JUDGEMENT: (Per: H.R. Shelat, J.)

Being aggrieved by the judgment and award dated 23rd September 1985 passed by the then learned Chairman of the Motor Accident Claims Tribunal, (Aux.), Ahmedabad, in Motor Accident Claim Petition No. 125 of 1984 on his file awarding the compensation of Rs. 92,000/- together with interest thereon at the rate of 6% p.a. from the date of the application till realisation and costs in proportion, both the parties have filed these two appeals.

2. Necessary facts may in brief be stated. Punabhai was serving in Calico Printing & Spinning Department. On 6th December 1983 riding over the cycle he was going to his place of work. He was driving the cycle remaining on the left side of the road and observing the rules of traffic. At 10.30 a.m., he reached a place between Astodia Gate and Raipur Gate in the city of Ahmedabad. At that time the Respondent No.5 (opponent No.1) was following him driving the Jeep No. GAK 1142 belonging to Madhyasth Ausadh Bhandar, Ashram Road, Ahmedabad. He was not careful in driving the jeep. He tried to overtake Punabhai. While overtaking he hit the cyclist against his right side, as a result Punabhai was knocked down seriously injured and he succumbed to the injuries in the hospital during treatment on 11th December 1983. The heirs and legal representatives of deceased Punabhai (Respondents Nos. 1 to 4) then filed M.A.C.P. No. 125 of 1984 against the owner and driver of the jeep for compensation of Rs. 1,50,000/=. The M.A.C. Tribunal at Ahmedabad, considering the evidence before it awarded Rs. 92,000/= together with interest and proportionate costs as aforesaid and further making it clear that if the amounts awarded were not paid within 6 months the interest at the rate of 12% would be charged. Being aggrieved by such judgment and award dt. 23-9-85 the

owner of the jeep (original opponent No.2) has filed First Appeal No. 660 of 1986 calling in question the legality and validity of the award, while the original-applicants (respondents Nos. 1 to 4) have filed First Appeal No. 822 of 1986 challenging the award qua the disallowed claim of Rs. 58,000/=.

3. It may be stated that the jeep was insured with the New India Insurance Company, but the Insurance Company was not joined as party to the Motor Accident Claim Petition. After the presentation of the appeal, the appellant in First Appeal No. 660 of 1986 filed Civil Application No. 1543 of 1986 for joining the Insurance Company as party. This Court allowed that application. Hence the Insurance Company came to be joined as party as respondent No.6 in First Appeal No. 660/86. Another Civil Application, being Civil Application No. 1544 of 1986 was also filed for permitting to produce additional evidence qua the insurance of the jeep involved in the accident. That application is pending and is placed before us for final disposal. Today, Mr. Mehta, the learned advocate representing the respondent No.6 in First Appeal No. 660/86 has tendered the copies of a Certificate issued by the R.T.O. dated 19th February 2000, the receipt issued by the Tribunal showing that the amounts of Rs. 92,000/= awarded have been deposited, and the copy of the policy of the jeep in question. The same are taken on record hearing the learned advocates.

4. As both the appeals arising out of the same award and in both the appeals common questions of law and facts are raised, to avoid duplication of work, waste of time and hardship to the parties as well as conflicting judgments, we preferred to hear the both the appeals together and dispose the same of by a common judgment. Accordingly, both the appeals are heard and by this common judgment,both the appeals shall stand disposed of.

5. It may be stated that no one has appeared on behalf of original-applicants, i.e., the appellants in First Appeal No. 822 of 1986 who are the respondents Nos. 1 to 4 in First Appeal No. 6640 of 1986. We have, therefore, with meticulous care and finicky details, perused the evidence on record and even tried to know the real fact going to the root of the case putting several queries to the learned advocates representing the parties in First Appeal No. 660 of 1986, and respondents in First Appeal No. 822 of 1986.

6. Mr. B.D. Desai, the learned A.G.P. for the

appellant in First Appeal No. 660 of 1986 has assailed the judgment on the ground of quantum alone. According to him, the amounts awarded are disproportionately high. Considering the income of the deceased and the evidence on record, the Tribunal ought not to have awarded Rs. 92,000/= but could have awarded far below than the said amount.

7. A fair and reasonable compensation has to be awarded to make the loss good and the same has to be assessed on the material placed on record before the court. If some one has lost the life in the motor accident, his dependents are no doubt entitled to the reasonable amount of compensation and the same has to be assessed determining what the deceased was paying to the family for their maintenance, how long he would have paid, and what amount he would have paid. For assessing the compensation accordingly, one has to examine the evidence and know what was the income of the deceased at the time of accident, and had he survived, to what extent he would have reached, which should be assessed on possible reasonable certainty and not on speculation or conjectures or assumption.

8. In the case on hand, the evidence shows that Punabhai, the deceased was a worker in the Calico Spinning & Printing Department and his total emoluments per month were Rs. 883.03 ps. His job security was at a stake and so with reasonable certainty his future income cannot be assessed. For the purpose of assessing the dependency, the Tribunal has therefore made this income to be the base and rightly so. To put it to a round figure, Rs. 883/- must be accepted as the base. The deceased must be spending on himself for his requirements. The Tribunal has rightly deducted Rs. 383/- as the amount the deceased must be spending on himself for his requirements. The monthly dependency is therefore rightly assessed at Rs. 500/- p.m.. The yearly dependency would therefore come to Rs. 6,000/=. The deceased on the date of accident was aged 44 years. He would have served for about 16 years more in the absence of any break and would have helped his family and even thereafter from the amounts he would have received because of his superannuation. In this case, therefore, multiplier of 15 should be adopted which is also adopted by the learned Chairman of the Tribunal. If the yearly dependency is multiplied by 15, the amounts payable under the head `Loss of Dependency' come to Rs. 90,000/= which is assessed by the Tribunal also

9. In those days, the conventional amount of Rs.

5,000/= were being awarded under the head `Loss to the Estate of the Deceased'. In this case, the deceased survived for 5 days but during all those 5 days, he was hospitalised and was under treatment of the Doctor because of the serious injuries he sustained. He was experiencing excruciating pain. Under the head `Pain, Shock and Suffering', therefore, the claimants are entitled to reasonable amount. The Tribunal has awarded Rs. 5,000/=. We do not see any reason to interfere with the same being fair and reasonable.

10. During the period of treatment, for the deceased the claimants must have spent for the medicines. The Tribunal has rightly assessed the medical charges at Rs. 100/- on reasonable guess work. Considering the evidence led, the claimants are also entitled to funeral expenses. The Tribunal has rightly assessed the same at Rs. 1,000/=. Thus, in our view, awardable compensation comes to Rs. 1,02,000/= but the Tribunal has awarded Rs. 10,000/= less and passed the award for Rs. 92,000/= on the ground that when lumpsum amounts were being paid and that too in advance there should be some deduction and the Tribunal thought it fit to deduct Rs. 10,000/=. In our view, such deduction is not proper but we would not like to disturb the award because the difference being small or negligible one. This Court has held in the case of Dy. Collector, Land Acquisition, Dharoi Canal Project Vs. Human Savdi Rahim Khalli - 39 (3) G.L.R. 2356 that where the amount at stake is small the court should not disturb the order passed by the lower Court. In view of such decision, we would abstain from disturbing the award passed.

11. For the aforesaid reasons, it is clear that there is no justifiable reason to interfere with the amounts of compensation awarded as the same being fair and reasonable. The contention advanced in this regard on behalf of the appellant in First Appeal No. 660 of 1986 must, therefore, fail. We, considering the evidence discussed hereinabove and also perusing the judgment rendered by the Tribunal, find no reason to enhance the compensation.

12. For what we have said hereinabove, both the appeals fail and are liable to be dismissed, making it clear that the Insurance Company, joined as respondent No.6 in First Appeal No. 660 of 1986, has to reimburse the appellant because of the contract of insurance entered into, and therefore its liability would be joint and several. It shall make the payment to the appellant in First Appeal No. 660 of 1986 of the entire amount

inclusive of costs and interest, the appellant has to pay to the claimant. It may be clarified that the appellant has already paid Rs. 92,000/= in the office of the Tribunal on 10th December 1986. The interest is, therefore, to be reckoned till that date at 6% p.a. With this direction both the appeals are hereby dismissed.

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